

BEFORE THE COLORADO AIR QUALITY CONTROL COMMISSION

REGARDING OIL & GAS RULEMAKING EFFORTS:)
REGULATION NUMBER 3, PARTS A, B AND C)
REGULATION NUMBER 6, PART A)
REGULATION NUMBER 7)

MOTION OF CONSERVATION GROUPS FOR ORDER ON PAGE LIMITS

The Sierra Club, Natural Resources Defense Council, Earthworks Oil and Gas Accountability Project, and WildEarth Guardians (collectively, the Conservation Groups), through their undersigned counsel, respectfully request that the Commission Hearing Officer enter an order requiring that party prehearing statements, and rebuttal prehearing statements, each be limited to no more than five single-spaced pages, exclusive of attachments required by Procedural Rule V.E.6.c(iv)-(ix). The Order should also provide that multiple parties may combine their five pages into longer statements.

Strict page limits will provide a strong incentive for the more than 30 parties to focus their arguments and file consolidated statements that avoid repetitive arguments. This approach will promote efficient and effective presentation of the issues while still allowing the Commission to make well-informed decisions in this proceeding.

DISCUSSION

I. THE COMMISSION HAS BROAD DISCRETION TO IMPOSE PAGE LIMITS THAT WILL PROMOTE AN EFFICIENT AND EFFECTIVE HEARING PROCESS.

This Commission's rules and the governing statutes afford it broad discretion to set page limits for party submittals in a rulemaking. The Colorado Administrative Procedure Act (APA) gives each agency conducting a hearing authority to: "regulate the course of the hearing ... issue appropriate orders which shall control the subsequent course of the proceedings; and take any other action authorized by agency rule consistent with this article." C.R.S. § 24-4-103(13). The APA directs that when promulgating rules, an agency hold a "public hearing at which it shall afford interested persons an opportunity to submit written data, views, or arguments and to present the same orally unless the agency deems it unnecessary." *Id.* § 24-4-103(4)(a). But the APA does not dictate the format or details of how that written input from the public must be received. *Id.* Colorado's Air Pollution Prevention and Control Act similarly gives the Commission broad discretion over the conduct of a rulemaking hearing. *See* C.R.S. §§ 25-7-109, 110.

This Commission's procedural rules specify that a party is permitted to make an individual written or oral presentation to the Commission, but they say nothing about how long that presentation must be. Air Quality Control Commission Procedural Rules, 5 C.C.R. 1001-1

(Procedural Rules), Rule V.E.3.a. Instead, the rules require a party to comply with all orders and limits set by the Commission, and generally leave the decision of whether to grant an entity party status entirely to the discretion of the Commission. Id.; id. Rule V.E.4.c.

Thus, the statutes and rules governing this rulemaking proceeding provide the Commission with ample authority to set reasonable page limitations for party submissions.

II. THE COMMISSION SHOULD IMPOSE A FIVE-PAGE LIMIT ON PRE-HEARING STATEMENTS AND REBUTTAL PRE-HEARING STATEMENTS TO AVOID DUPLICATIVE ARGUMENTS.

The Commission’s procedural rules explain that they “are designed to promote open, fair, and effective proceedings with the input and participation of the general public. . . . [The goal is] to produce thoughtful and well-informed decisions.” Procedural Rule I (emphasis added). By requiring a five-page limit, the Commission will promote an effective and efficient hearing process while still allowing parties to provide the information and arguments needed for a well-informed Commission decision.

With more than 30 parties to this proceeding, absent strict page limits there will be a flood of paper for the Commission and the participants to digest. For example, the requests for party status indicate that some parties plan to raise literally dozens of issues in their pre-hearing statements. See, e.g., request of Chevron USA, Inc. (Dec. 12, 2013); Colorado Petroleum Association request for party status (Dec. 13, 2013); petition for party status of Bill Barrett, et al. (Dec. 13, 2013).

The applications for party status also show that there is considerable overlap in the legal and factual issues the parties intend to raise. For example, the applications indicate that many parties will raise claims that:

- The commission lacks legal authority to regulate methane;
- The staff proposal fails to account for differences between basins;
- The staff proposal fails to recognize differences between attainment and nonattainment areas;
- Certain requirements, such as leak detection and repair, are not “technically and economically feasible;” and
- A variety of other arguments that were stated vaguely but appear likely to be repetitive, such as the cost-effectiveness of the new rules.

Numerous parties also plan to challenge the Division’s economic analysis in their pre-hearing statements.¹

¹ At the December 19, 2013 status conference, certain party representatives also requested an additional round of briefing to raise objections to the economic and regulatory impact analyses

Without strict page limits, the Commission can expect to receive numerous voluminous pre-hearing statements addressing the same legal and factual issues. This would frustrate the goal of an effective and efficient hearing process. It also will do nothing to foster well-informed decisions by the Commission on the proposed rules. For example, if multiple parties assert that the proposed leak detection and repair requirements are infeasible, the Commission will get little benefit from wading through half a dozen 10-page arguments on this point.

Instead, the Commission should impose strict five-page limits on pre-hearing statements. The Conservation Groups propose that the five-page limit apply to the principal pre-hearing statement itself and cover documents, which are defined at Procedural Rule V.E.6.c (i)-(iii). These include:

- A summary of the party's position and of any voluminous exhibits;
- An explanation of the legal and factual issues arising from the rulemaking proposal, and the party's position on those issues; and
- A list of the issues to be resolved by the Commission during the hearing.

Procedural Rule V.E.6.c (i)-(iii). The five-page limit would not apply to attachments to the pre-hearing statement. See id. at V.E.6.c(iv)-(ix) (listing required attachments to prehearing statement).²

This page limit will force parties to focus their arguments and encourage them to coordinate with other similarly-situated parties on the presentation of common issues. Multiple parties can, for example, file consolidated statements longer than five pages. Alternatively, a party can file a five-page statement that simply adopts by reference an argument made by another party.

Moreover, a five-page limit will discourage parties from making meritless or tangential arguments. For example, the Commission's decision-making will not benefit from receiving numerous arguments that it lacks the legal authority to regulate methane. Instead, parties should be forced to focus their pre-hearing statements on issues that really matter.

prepared by the Division and by the Department of Regulatory Agencies pursuant to C.R.S. §§ 24-4-103(2.5)(a), (4.5). This supplemental briefing apparently would be in addition to the parties' discussion of costs and benefits in pre-hearing statements.

² Required attachments to the pre-hearing statement include hearing exhibits, the text of alternate proposals, written testimony to be offered at the hearing, and certain other documents. Because the five-page limit would not apply to these attachments, it will not prevent parties from presenting necessary evidence or making a record in this proceeding. Limiting the pre-hearing statements will, however, force parties to present the arguments based on that evidence in a concise and efficient manner.

CONCLUSION

For the reasons stated above, the Conservation Groups respectfully request that the Hearing Officer enter an order directing that for each party:

- (a) the pre-hearing statement be limited to no more than five single-spaced pages, exclusive of those attachments required by Procedural Rule V.E.6.c (iv)-(ix);
- (b) the rebuttal pre-hearing statement be limited to five single-spaced pages, exclusive of attachments; and
- (c) multiple parties may combine their allotted five pages into longer statements.

Date: December 20, 2013

Respectfully submitted,



Michael S. Freeman
mfreeman@earthjustice.org

Robin L. Cooley
rcooley@earthjustice.org

Earthjustice
1400 Glenarm Place, Suite 300
Denver, CO 80202
(303) 623-9466
(303) 623-8083 (fax)

COUNSEL FOR SIERRA CLUB, NATURAL
RESOURCES DEFENSE COUNCIL,
EARTHWORKS OIL AND GAS
ACCOUNTABILITY PROJECT AND
WILDEARTH GUARDIANS

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of December 2013, I served the foregoing MOTION OF CONSERVATION GROUPS FOR ORDER ON PAGE LIMITS by electronic mail on all parties listed on the Commission's Party Status List.

/s/ Michael S. Freeman